

SETTLEMENT AGREEMENT

DRAFT

BETWEEN: CITY OF EUGENE, LANE COUNTY, MULTNOMAH COUNTY, CITY OF PORTLAND, CITY OF ROSEBURG, CITY OF HUNTINGTON, CANBY UTILITY BOARD and ROGUE RIVER VALLEY IRRIGATION DISTRICT (Collectively "Petitioners")

AND: STATE OF OREGON, PUBLIC EMPLOYEES RETIREMENT BOARD ("PERB")

RECITALS:

- A. Petitioners filed petitions for judicial review in Marion County Circuit Court (Case Nos. 99C12794; 99C12838; and 00C16173). The cases, which were consolidated for trial, sought review of various petitioners' 1998 and 2000 employer contribution rate orders (a total of 12 separate rate orders) and of the March, 2000 earnings allocation order. The State of Oregon, Public Employees Retirement Board was named as defendant. A group of individuals representing the interests of PERS members and retirees intervened (collectively "Intervenors"). The consolidated cases are commonly referred to as *City of Eugene v. State of Oregon, Public Employees Retirement Board*.
- B. The Eugene Water and Electric Board ("EWEB") also filed petitions for judicial review of its 1998 and 2000 employer contribution rate orders (Case No. 99C20235). Prior to trial, the Court dismissed EWEB's petitions on the ground that EWEB was already represented in the proceedings by the City of Eugene.
- C. After trial, the Marion Circuit Court issued a judgment in favor of Petitioners, which is attached to this Agreement as Attachment 1 and incorporated herein by reference. In that judgment the Court reversed each of the challenged orders and remanded them to PERB for issuance of new orders consistent with the Court's findings. The Court found that the former PERB misapplied the law and abused its discretion in administering PERS. As a result, the Court found that the former PERB was improperly charging Petitioners for the cost of its unlawful actions. The Court further found that the former PERB had abused its discretion by allocating 20% earnings to Tier 1 member accounts for 1999. The Court also upheld Intervenors' challenge to the implementation date of the "employer-in-variable" rule. The Court ordered PERB to pay the Petitioners' reasonable costs and attorney fees for the litigation. PERB, EWEB and Intervenors filed notices of appeal of the judgment to the Oregon Court of Appeals. After the appeal was filed, PERB moved to stay enforcement of the judgment. That motion was denied both by the circuit court and by the Court of Appeals. PERB is under a present obligation to implement the judgment entered in *City of Eugene v. State of Oregon, Public Employees Retirement*

Board.

- D. After the circuit court decision, the 2003 Legislative Assembly enacted legislation reforming PERS (“reform legislation”). The reform legislation addresses and corrects some of the legal errors of the former PERB identified in the *City of Eugene v. State of Oregon, Public Employees Retirement Board* judgment.
- E. The parties desire to settle this matter on the following terms.

AGREEMENTS:

- I. PERB will implement the judgment entered in *City of Eugene v. State of Oregon, Public Employees Retirement Board* (“the judgment”) as follows:
 - 1.1. PERB will implement the judgment that the statutes governing the Public Employees Retirement System do not require employers to match the amount by which an employee’s variable account exceeds what the employee contributions to the variable account would have earned if they had been invested in the regular account by adopting a rule governing calculation of money match benefits for members participating in the variable account program. This rule will be adopted no later than July 1, 2004.
 - 1.2. PERB will implement the judgment upholding Intervenors’ challenge to the implementation date of the “employer-in-variable” rule by transferring from employer accounts to the contingency reserve established by ORS 238.670(1) the amount determined by the PERS actuary to have been improperly credited to employer accounts according to the judgment. This transfer will be accomplished by means of a new order allocating 1999 earnings. The new 1999 earnings allocation order will be entered no later than March 31, 2004.
 - 1.3. The new 1999 earnings allocation order described in paragraph 1.3 above will provide that the appropriate earnings allocation to Tier 1 regular member accounts is 11.33%, that 7.5% of the 1999 earnings should have been allocated to the contingency reserve established by ORS 238.670(1), and that the gain-loss reserve created by ORS 238.670(3) should have been funded to the full extent of the former PERB’s policy to maintain a gain-loss reserve sufficient to credit the assumed interest rate to Tier 1 regular member accounts during a period of 30 months of 0% earnings. However, except as provided in paragraph 1.2 above, the order shall also provide that member accounts, the contingency reserve and the gain-loss reserve will not be adjusted to reflect the reallocation described in this paragraph so long as PERB follows the income allocation provisions of 2003 Or Laws c. 67, sections 5 and 10. The order shall provide that if sections 5 or 10 of Or Laws c. 67 are declared to be invalid or unconstitutional by a final judgment

entered by a court of competent jurisdiction or are repealed, or if PERB otherwise fails to implement those provisions, then PERB will, within 30 days, adjust member accounts, the contingency reserve and the gain-loss reserve as described in this paragraph.

- 1.4. PERB will comply with the statutory directives concerning reserving practices and mortality tables, as interpreted in the judgment and as amended by the reform legislation.
 - 1.5. PERB will direct its actuary to recalculate employer contribution rates for Petitioners City of Eugene (including EWEB) and Lane County for 1998, 2000 and 2003, and for all other Petitioners for 2000 and 2003. The actuary will be directed to calculate those contribution rates as if PERB's practices and actuarial assumptions with respect to employer match of variable accounts, actuarial equivalency factors, reserving practices and the "employer-in-variable" rule had been consistent with the law as interpreted in the judgment and as if PERB had, for 1999, originally allocated earnings of 11.33% to Tier 1 regular member accounts, allocated 7.5% of earnings to the contingency reserve and had fully funded the gain-loss reserve pursuant to its policy described above in paragraph 1.3. PERB will issue new contribution rate orders for the City of Eugene (including EWEB) for 1998, 2000 and 2003, and for all other Petitioners for 2000 and 2003, consistent with the actuary's recalculations. PERB will treat the difference between the Petitioners' contributions made pursuant to the former contribution rate orders and the corrected contribution rate orders as excess employer contributions. Each Petitioner may apply the excess contributions to reduce its unfunded actuarial liability or to reduce future contribution rates. PERB will enter the revised employer contribution rate orders no later than July 1, 2004. PERB will not under any circumstances, now or in the future, charge any Petitioner, directly or indirectly, for costs incurred as a result of the rate reductions provided for in this paragraph.
 - 1.6. PERB will issue new employer contribution rate orders for all participating employers for 2003, no later than July 1, 2004, calculated to implement paragraphs 1.1, 1.2, 1.3 and 1.4 above.
 - 1.7. Within ten (10) business days of the effective date of this Agreement, PERB will pay Petitioners \$750,000.00 as partial reimbursement of the attorney fees Petitioners paid to litigate the *City of Eugene v. State of Oregon, Public Employees Retirement Board* cases.
2. Immediately upon the effective date of this Agreement, PERB will dismiss its appeal of the judgment in *City of Eugene v. State of Oregon, Public Employees Retirement Board*. If Intervenors' appeal of the judgment is not dismissed, Petitioners will defend that appeal

at their own expense.

3. Immediately upon the effective date of this Agreement, Petitioners will dismiss their petitions for judicial review of PERB's 2003 contribution rate orders.
4. The parties acknowledge that they have been represented by independent counsel throughout the negotiation of this Agreement; that each has authority to enter into this Agreement; that they understand the terms of this Agreement; and that they have entered into this Agreement voluntarily. The parties further acknowledge that the complete terms of the Agreement are set forth in this written document, and that they have not relied on any other representations or promises except those contained in this Agreement.
5. This Settlement Agreement shall become effective on the date when all parties have signed the Agreement.

Public Employees Retirement Board
By: _____
Date: _____

Lane County
By: _____
Date: _____

City of Eugene
By: _____
Date: _____

Multnomah County
By: _____
Date: _____

City of Portland
By: _____
Date: _____

City of Roseburg
By: _____
Date: _____

City of Huntington

By: _____

Date: _____

Canby Utility District

By: _____

Date: _____

Rogue River Valley Irrigation District

By: _____

Date: _____

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